

GRIEVANCE PROCEDURES FOR RYAN WHITE TITLE I PROGRAMS

TECHNICAL ASSISTANCE CONFERENCE CALL

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Arranged by:

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EXECUTIVE SUMMARY

This report summarizes the information presented in "Grievance Procedures" for Ryan White Title I programs, one of a series of nationally broadcast technical assistance conference calls arranged by the Division of HIV Services (DHS), Health Resources and Services Administration (HRSA). **The report reflects both the content of the presentations and the questions and comments from listeners during the call, as well as information from DHS policy guidances and supporting information on mediation and arbitration.** The teleconference was broadcast on January 14, 1997. Participating in the conference call were more than 250 individuals from approximately 60 sites throughout the country.

The purpose of the conference call was to discuss and clarify implementation of legislative requirements related to grievance procedures. The discussion focused on the model grievance procedures developed by DHS, the analysis of the draft grievance procedures submitted with the FY 1997 Formula Funding Applications, grantee and planning council responsibilities in implementing grievance procedures, and technical assistance available from DHS to help grantees meet statutory requirements.

The reauthorized Ryan White CARE Act requires that both grantees and planning councils each have their own grievance procedures. The purpose of grievance procedures is to provide a locally defined process to address grievances related to funding and priority setting. The goal of DHS is to give maximum flexibility to grantees and planning councils in developing grievance procedures that work at the local level, while adhering to the requirements of the law.

DHS conducted an analysis of the draft grievance procedures submitted by all Title I programs with their formula applications which was discussed during the call. The analysis follows a structured outline for model grievance procedures developed by DHS to guide grantees and planning councils in implementing statutory requirements related to grievances.

- **Part I of the analysis addresses the types of grievances that must be covered and who can bring them.** The legislation requires that grievances cover decisions related to funding which are defined in the model; other types of grievances can be included at the discretion of the grantees and planning councils.
- **Part II of the analysis addresses requirements about mediation, and Part III deals with arbitration requirements.** All procedures must define some non-binding process. Binding arbitration should be used only as a last resort. The model procedures suggest several options for selecting third-party mediators and/or arbitrators. Other methods may be used, but whoever conducts the non-binding or the binding arbitration process should be independent and impartial to the grievance being brought.
- **Part IV of the analysis looks at how rules for the grievance process address issues of cost, and limits on the remedies.** The issues of costs and their allocation are up to each local community to determine, but should be reasonable

and not dissuade legitimate grievances. Title I funds can be used to develop and implement grantee and planning council grievance procedures. The grantee can use funds within the 5% administrative cost cap, and the planning council can include resources to develop and implement the grievance procedures in their planning council support budget. It is also up to each local community to decide whether remedies will be prospective or retroactive.

Results of DHS analyses indicate that most grantees and planning councils already have a process to address grievances, but these need to be adapted and expanded to meet the new requirements. Although grantee and planning council grievance procedures are independent processes, there should be coordination between the two entities. Ultimately, the Chief Elected Official (CEO) is responsible for assuring that the planning council adopts procedures that meet the requirements of the law.

An effective grievance process involves having either the planning council or grantee- designated representative work with the grievant from the very beginning, to define exactly what the grievance is, what the issues are, and what kind of accommodation can be made through the mediation process, and if possible, resolve the conflict early in the process. Only as a last resort should the process utilize binding arbitration. Grievance procedures should be based on the principles of fairness and equity through defining a process that is easily accessible and involves a fair exchange of views between people.

The intake process is a critical element of the grievance procedures. The grievance procedure requirements are clear about having someone designated as a primary contact point, so that anyone with a dispute or grievance will know where to go to have it addressed.

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I. INTRODUCTION

A. PURPOSE

This report summarizes the information presented in the teleconference call on "Grievance Procedures for Ryan White Title I Programs" which took place on January 14, 1997. This call begins the fourth year of this series of nationally broadcast technical assistance conference calls for the Ryan White CARE Act community arranged by the Division of HIV Services (DHS), Health Resources and Services Administration (HRSA). **Included in this summary are both the content of the presentations and the questions and comments from listeners during the call, as well as information from DHS policy guidance on grievance procedures, and supporting information on mediation and arbitration to enhance grantee and planning council understanding of issues related to non-binding and binding arbitration.**

The purpose of this conference call was to discuss and clarify implementation of legislative requirements related to grievance procedures, including the purpose of grievance procedures, the model procedures developed by DHS, and grantee and planning council implementation responsibilities. The call also provided information on dispute resolution and technical assistance available from DHS to help grantees meet the Title I grievance requirements. (See Appendix A for an agenda of the conference call.)

The conference call panelists included staff from DHS and expert consultants working with DHS on the issue of grievance procedures for Title I programs (See Appendix B for a list of panelists.)

B. PROCESS

The conference call addressed topics and questions submitted by conference call registrants prior to the call, including Title I grantee representatives and planning council members. In addition, listeners had the opportunity to ask questions during the call. Participating in the conference call were more than 250 individuals from approximately 60 sites throughout the United States.

The format of this conference call included a significant amount of commentary from the Division of HIV Services, to describe DHS expectations regarding practical implementation of the grievance procedures requirement for Title I programs, as well as comments from mediation and arbitration experts

II. LEGISLATIVE REQUIREMENTS AND DHS EXPECTATIONS RELATED TO GRIEVANCE PROCEDURES

The purpose of grievance procedures is to provide a local, defined process to address grievances related to funding. DHS' goal for this activity is to provide mechanisms whereby potentially costly and disruptive grievances can be prevented by instituting processes and communication strategies that give every opportunity to solve disputes early. DHS believes that this focus will improve CARE Act planning and implementation processes.

Title I grantees and planning councils were required to submit draft grievance procedures with their Title I formula applications in November 1996. Final grievance procedures must be submitted to DHS by May 1, 1997, so that approved grievance procedures can be in place for all Title I grantees and planning councils by June 1, 1997. DHS staff are available to work with grantees to help them meet this requirement. To assure that the May 1 deadline is met, DHS requests that grantees and planning councils needing assistance contact their Project Officers as soon as possible.

A. OVERVIEW OF GRIEVANCE PROCEDURES ANALYSIS

DHS conducted an analysis of the draft grievance procedures submitted by all Title I programs with their formula applications. The results of those analyses have been returned to grantees and planning councils with comments regarding the extent to which the draft procedures meet CARE Act requirements. The analysis follows the outline of the model grievance procedures that were sent to grantees with the formula application guidance. The format summarized the model in a series of questions. In order for grantee and planning council grievances to be approved by DHS as required by the Ryan White CARE Act, the grievances must include clear answers to the questions in the analysis. Most of the draft grievance procedures that were submitted by grantees with the formula applications have not yet addressed many of these questions. Grantees and planning councils are asked to work with their Project Officers to address those questions as soon as possible in order to have approvable grievance procedures by the May 1 deadline.

Part I of the DHS analysis addresses the types of grievances that must be covered and who can bring them. The legislation *requires* that grievances cover decisions related to funding; other types of grievances that grantees and planning councils may choose to include in their procedures are to be decided locally. While the analyses ask about these and other potential grievances, only funding-related grievances must be covered in order that the grievance procedures be approved by DHS.

ELIGIBLE GRIEVANTS

Individuals or entities affected by the outcome of a funding decision. At a minimum, these must include:

- Providers eligible to receive CARE Act funding
- Consumer groups/PLWH coalitions and caucuses

TYPES OF GRIEVANCES

PLANNING COUNCILS (Priority Setting and Allocations Process)

Grievance procedures must allow directly affected parties to grieve:

- Deviations from an established, written priority-setting or resource-allocation process (e.g., failure to follow established conflict of interest procedures).
- Deviations from an established, written process for any subsequent changes to priorities or allocations.

GRANTEES (Procurement Process)

Grievance procedures must allow directly affected parties to grieve:

- Deviations from the established contracting and awards process (e.g., the selection of a particular provider in a manner inconsistent with the grantee's established procurement process).
- Deviations from the established process for any subsequent changes to the selection of contractors or awards.

Grievance procedures must allow planning councils to grieve:

- Contracts and awards not consistent with priorities (including any language regarding how best to meet those priorities) and resource allocations made by the council.
- Contract and award changes not consistent with priorities and resource allocations made by the council.

Part II of the DHS analysis addresses requirements about mediation. All procedures must define some non-binding process for resolving grievances. The legislation requires binding arbitration after all other attempts at resolution have failed. The mediation requirement in the model and the analysis are included to ensure that an effort is made to resolve grievances before the use of binding arbitration. The model and the analysis contain several options for selecting third-party mediators. Other methods may be used, but whoever conducts the non-binding process should be independent and impartial to the specific grievance presented.

NON-BINDING PROCEDURES FOR RESOLVING CONFLICTS

To be approvable, grievance procedures must include non-binding procedures for resolving conflict. At a minimum, these must:

1. Designate a person/organization to receive grievances on behalf of the planning council or grantee.
2. Provide a form to initiate non-binding dispute settlement, which, at a minimum, includes:
 - the names, addresses and telephone numbers of the parties involved;
 - the issue(s) to be resolved and how the grievant has been directly affected by the decision of the planning council or grantee;
 - the remedy sought by the grievant;
 - the place where or person to whom the form should be delivered;
 - the designated person or position to register the form and notify the filing party of any determinations or decisions that are made; and
 - a statement of any reasonable administrative fee to be paid by grievant, and whether payment must be included with the filing of the form.
3. Specify rules that will apply to non-binding dispute settlement processes.
4. Provide a mechanism to effectively inform the grievant of the rules that will apply to the process and steps the grievant should take if there is no resolution of the grievance within the appropriate time period and the grievant wishes to initiate binding arbitration.

Part III of the analysis deals with the arbitration requirements. The law requires that arbitration be an option if other methods of dispute resolution have failed. DHS has tried to accommodate local custom and rules regarding local government entities entering into binding arbitration. The scope of the grievance procedures is limited, and several options for selecting an arbitrator, including appointment by the Chief Elected Official (CEO), have been outlined. DHS will look closely at the mechanisms chosen to select an arbitrator and will be flexible in approving the mechanism described. The key is to have an arbitrator who is independent and impartial to the grievance being brought. The more clearly independence and impartiality can be demonstrated, the easier it will be for DHS to approve the procedures.

BINDING ARBITRATION PROCEDURES

To be approvable, grievance procedures must specify the use of arbitration to resolve disputes when other methods have failed. At a minimum, arbitration procedures must include the following:

1. A designated person or organization to receive grievances on behalf of the planning council or grantee.
2. A form to initiate non-binding dispute settlement, which, at a minimum, includes:
 - the names, addresses and telephone numbers of the parties involved;
 - the issue(s) to be resolved and how the grievant has been directly affected by the decision of the planning council or grantee;
 - the remedy sought by the grievant;
 - the place where or person to whom the form should be delivered;
 - the designated person or position to register the form and notify the filing party of any determinations or decisions that are made; and
 - a statement of any reasonable administrative fee to be paid by the grievant, and whether payment must be included with the filing of the form.
3. Specific rules that will apply to the binding arbitration processes.
4. A mechanism for effectively informing the grievant of the rules that will apply to the process.

Part IV of the analysis looks at rules for the grievance process related to costs and any limits on the remedies ultimately decided upon. The issue of costs and allocation of those costs must be addressed in the grievance procedures but can be locally determined. Administration fees are allowable. Grantees and planning councils should be in contact with local third-party mediators and arbitrators to discuss potential costs. It is permissible, for both the planning council and the grantee grievance process, to require a grievant to pay a reasonable administrative fee to initiate the process. It is also allowable and acceptable to require grievants to share in the costs of mediation and arbitration. The key is to be clear about the cost in the written procedures and to set them at a level that does not preclude legitimate grievances from being brought.

Determining appropriate costs is the responsibility of the local entity, but must be reasonable. This amount needs to be spelled out -- what the charges are, and at what point(s) in the process they are to be paid -- so that everyone knows what it is. At the discretion of the local entity, the administrative fee or the cost of a third-party mediator/ arbitrator can either be shared or be allocated based on the result. For example, if the grievance is found to have merit, the planning council or grantee might bear more or all of the costs.

Tile I funds can be used to develop and implement grantee and planning council grievance procedures. The grantee can use funds within the 5% administrative cost cap to both develop and implement the grievance procedures. The planning council can, within its ability to set priorities, include funds as part of planning council support to set up and implement the grievance procedure.

RULES FOR THE GRIEVANCE PROCESS

Rules for the grievance process must address:

♦ Timing

- The length of time after a planning council or grantee decision to bring a grievance;
- Time periods for the conduct of non-binding processes;
- Maximum amount of time to complete non-binding process;
- The length of time after conclusion of non-binding processes for grievant to initiate binding arbitration; and
- Time period for the conduct of the arbitration process.

♦ Costs

- A statement of reasonable administrative costs, how they will be allocated between the parties, and when they are due; and
- Costs or transfers of funds that may be called for in any settlement agreed to by the parties or a decision of an arbitrator.

♦ Funding after a grievance is filed

- Whether any settlements reached should be prospective, or require retroactive application.

♦ A process for reviewing grievance requests

DHS also allows for remedies to be limited to future processes. For example, grantees and planning councils may stipulate that the results of mediation and arbitration may not force a reversal of decisions that have already been made. However, by establishing clear timelines for the grievance process and by resolving grievances early and within relatively short time frames, it is possible to apply retroactive remedies; that is, to require a decision to be revisited with a process that addresses the arbitrated or mediated remedy.

DHS does not require any specific time frame for remedies or time periods in which grievances should be considered. It will be up to each EMA, in consultation with its legal counsel, mediation/arbitration experts, and the community, to establish locally these time frames. It is the intent of DHS to be as flexible as possible regarding such time frame requirements to allow local procedures to work. Making the process for developing grievance procedures public and open will provide EMAs with community input and feedback regarding the appropriateness of such time frames. As they engage in dialogue regarding the time frames and time periods in which they will consider grievances, DHS is asking each local community to balance the intent of these procedures -- which is to provide

RULES FOR THE GRIEVANCE PROCESS

(continued)

◆ **Selection of third parties, by:**

- Naming independent and impartial third parties in advance who can be drawn on to resolve a particular grievance;
- Designating an organization in advance that identifies and provides independent and impartial third parties to resolve grievances;
- Having the CEO appoint an independent and impartial third party (Note: A third party designated by the administrator of the process should execute a statement concerning conflict of interest to be reviewed by the parties involved); and
- Submitting names of several third parties and asking each party to cross off unacceptable names. If after several lists, no third party has been selected, a designated person or organization should select the third party.

◆ **Non-Binding Procedures** that specify:

- Degree of confidentiality of the process;
- Time period between filing the form and response from the other party; the process and time period for designating a third party;
- Time period for holding a meeting of the parties, if necessary; and the designation of the meeting place; and
- Time that a non-binding process can continue without agreement, after which the third party must inform the parties of any additional steps.

an avenue for grievances -- with the need to allocate and distribute CARE Act funds quickly and efficiently.

The goal of DHS is to give maximum flexibility to grantees and planning councils while adhering to the requirements of the law. DHS will be as flexible as possible in working with grantees and planning councils to develop procedures that work at the local level. The specific ways in which grantees and planning councils choose to address the questions posed in the analysis should provide an opportunity for legitimate grievances to be heard and resolved through a clear and fair process. The annotations supplied with the model grievance procedures (See Appendix C) and the sample rules from several mediation and arbitration organizations which have been provided by DHS are good sources of information for constructing these procedures. Grantees and planning councils need to work with Project Officers as soon as possible to address the specific questions raised in the analysis of their draft grievance procedures.

B. GRANTEE AND PLANNING COUNCIL RESPONSIBILITIES IN IMPLEMENTING GRIEVANCE PROCEDURES

The reauthorized legislation requires that grantees and planning councils each have their own grievance procedures. The model grievance procedures and annotation provided by DHS as part of the formula grant application guidance (See Appendix C) specified the different elements which need to be incorporated into the grantee and planning council grievances.

It is imperative that the grantee's legal department and the contracts, grants or procurement office be involved in the development of the grievance procedures, since most grantees need to adapt their existing grievance process to meet the new requirements. Several grantees have indicated that they already have a process for non-binding procedures and arbitration at the county or city level and that they are using or modifying those existing procedures for the CARE Act program. Several communities have indicated that an arbitration center or some other neutral third party is already used by the county or city to resolve conflicts around funding decisions; again, the CARE Act program will use those same resources. Most grantees have indicated that they have an existing grievance system for grieving the funding decision process and are expanding on that to incorporate any additional requirements of the model grievance procedures. The procedures may need to be modified to meet the requirements of the model grievance procedures, but the model is flexible enough to accommodate many existing local systems.

Several planning councils have indicated they have some grievance procedures already in existence, but most indicate that these need to be expanded or modified to accommodate the model grievance procedures. Existing grievance procedures often revolve around consumer grievances regarding service delivery, whereas the model grievance procedures address the planning council decision-making process. This is an important differentiation. Client grievances regarding the delivery of services are not a required component of the model grievance procedures for either the planning council or the grantee. However, either or both procedures may incorporate client grievances regarding services if they wish to go beyond the scope of what

is required. The process by which the planning council makes decision regarding priorities and the allocation of resources must be covered in the planning council grievances, and should be grievable by consumers of services. Several planning councils have indicated that they have existing grievance committees in place, but again, the purpose and process for utilizing the grievance committee need to be reevaluated against the required elements of the model grievance procedures. Existing planning council processes are often flexible and have few rules such as time frames, forms, etc. These may need to be addressed in more detail in the new procedures submitted to DHS.

The grantee plays a role in assuring that the planning council meets grievance procedure requirements. Ultimately, the CEO must sign assurances, as part of the supplemental grant application, affirming that the planning council has grievance procedures which meet CARE Act requirements. Therefore, the CEO is responsible for assuring that the planning council adopts procedures that are consistent with the model grievance procedures, and that these grievance procedures are incorporated or referenced in its bylaws. In addition, the grantee may have legal resources to help the planning council develop its grievance procedures and may have experience with non-binding procedures and arbitration that will be useful to the planning council in developing its procedures, including the use of third-party mediation resources. The grantee contracts or procurement office may also have experience with conflict of interest provisions and language that will be useful to the planning council.

The process for developing grantee and planning council grievance procedures can be independent, but should be coordinated. The legislation contemplates that grantee and planning council grievances are independent processes. It requires separate grievance procedures for grantees and planning councils and the two cannot be combined. As with all implementation aspects of the CARE Act, however, it is important for the grantee and the planning council to work closely together.

Grievance procedures do not affect the liability of planning council members involved in a grievance process. From a legal standpoint, the grievance procedures as implemented will neither take away nor add to any responsibility or liability on the part of planning council members. Legal rights will remain intact. Neither the procedures nor the legislation is intended to add anything or take away from the legal rights or liabilities that already existed.

Grantee and planning council grievance processes should not present barriers or inhibit in any way the filing of legitimate grievances. The intent of these procedures is not having grievances get to the arbitration stage. The ideal is to have a process that involves having either the planning council- or grantee-designated representative work with the grievant from the very beginning to define exactly what the grievance is, what the issues are, and what kind of accommodation can be made through the mediation process, and if possible, resolve the conflict early in the process. Only as a last resort should the process utilize binding arbitration. Grievance procedures should be based on the principles of fairness and equity through defining a process that is easily accessible and involves a fair exchange of views between people. The procedures

should not foster an environment in which one party has the dominant power position, but rather one in which both parties are on an equal level and can have a good dialogue about what the grievance is about, and come to a mutual resolution satisfactory to all parties.

The grievance procedure requirements are clear about having someone designated as a primary contact point, so that anyone with a dispute or grievance will know where to go to have it addressed. This contact person should be knowledgeable about these procedures and, if possible, have training in dispute resolution so that s/he understands the process. This contact should be the focal or referral point, a place to find answers, and provide a little "hand-holding" about using the grievance procedure. The intake point is a very important source of support. Also, having a standardized form that describes the process can help the contact person do his/her job, and provide for a consistent and more equitable interaction. Such a form provides a record of the stages of the grievance and requires the grievant to describe the nature of the complaint, which gives the contact person an opportunity to direct the grievant to some form of informal resolution which might be able to solve the problem without the use of formal procedures.

EMAs WITH MULTIPLE JURISDICTIONS

Can EMAs with multiple jurisdictions develop one process for the entire EMA for resolving disputes involving the planning council and grantee, since federal law and regulation supersede state law and regulation? (For example, for Washington D.C., an EMA covering four separate jurisdictions, developing four separate grantee dispute resolution processes might be very cumbersome, as well as a confusing process for potential affected parties.)

The premise to keep in mind is that an EMA needs to develop a grievance procedure for the planning council and one for the grantee that is accessible to all the parties and all the entities in the EMA. The way this is done could take many different forms. DHS does not want to impose one particular way, but rather allow flexibility in approach. If the EMA meets the basic requirement -- that anyone who is involved in the process wherever s/he lives in the EMA has access to a consistent set of principles in a grievance procedure, then the intent of the legislative requirement is fulfilled. DHS will work, on an individual basis, with multi-jurisdiction EMAs to develop processes that address regulations of the various jurisdictions, which at the same time are not overly cumbersome.

C. TECHNICAL ASSISTANCE TO HELP GRANTEE MEET GRIEVANCE PROCEDURES REQUIREMENTS

DHS is prepared to work with grantees and planning councils to assure that grievance procedures meet the statutory requirements. Three ways exist to secure help in finalizing grievance procedures:

- **Contact your Project officer.** Many grantees and planning councils have already contacted their Project Officers and are working with them to address unresolved issues. DHS encourages all EMAs that may need assistance in meeting grievance requirements to work with the Project Officer assigned to them.
- **Use State and local resources.** Organizations such as the American Arbitration Association or the Better Business Bureau (to name two) have lists of trained mediators and arbitrators, and their organizations have offices throughout the country. The National Association of Community Mediation and the Society for Professionals in Dispute Resolution can also provide assistance. Locally, university-based programs, State and Federal court programs, and many State offices of dispute resolution are also available to help. Project Officers can provide contact information for national and local organizations that can assist in this process.
- **Talk to other grantee and planning council representatives throughout the country.** Colleagues can share their experiences and provide useful suggestions. DHS will be asking grantees that submit their grievance procedures early if they would be willing to share them with other grantees. DHS will also be looking for grievance procedures that it considers should be shared as models. Project Officers can help to identify other grantees that may be able to provide peer technical assistance.

III. DISPUTE RESOLUTION

A. DISPUTE RESOLUTION AND THE TITLE I GRIEVANCE PROCESS

Binding arbitration is meant to be a measure of last resort. If the grievance procedures are good and they work well, arbitration will be only a last resort for unreconcilable disputes. Although the language that parties in conflict may tend to use highlight arbitration, the emphasis and intent of this process are on preventive techniques and resolving disputes voluntarily. Arbitration is foreseen as a last step.

Dispute resolution is envisioned as a three-step process. First, resolution should contemplate good-faith negotiations between the people who are in the dispute and the agency; and ideally, people who engage a dispute in good faith should be able to resolve it. If that is not possible, then it may be necessary to bring in the services of an independent neutral -- what is generally called a mediator -- who helps people negotiate. This is the second step. A mediator helps the parties come together around a solution that works for

FUNCTIONS OF A MEDIATOR

- Listener
- Translator of information
- Transmitter of information
- Stable hand
- Catalyst
- Scape goat
- Agent of reality

them; a mediator does not issue a binding decision. If the previous two steps fail, as a last resort, the law and the grievance procedures require binding arbitration.

When dealing with binding arbitration and with non-binding arbitration -- which is essentially mediation -- planning councils and grantees should look for an independent and impartial third party. This means a person outside the planning council, grantee, or affected community. There are a wealth of potential resources to help find such individuals, including some of the organizations previously mentioned. Local communities will often have non-profit dispute resolution services that have been set up to assist local courts. Universities and State agencies will often offer these services.

DHS can also provide a list of resources. Title I grantees and planning councils should tap these resources for advice regarding specific rules, time frames, etc. as they develop their grievance procedures. The DHS analysis provides the questions that Title I programs need to ask. The specific ways in which these questions are answered -- what is a reasonable cost, what is a reasonable time frame, etc. -- may be based on advice from local resources.

GOALS OF MEDIATION

- Vent and diffuse feelings
- Clear up misunderstandings
- Determine underlying interests and concerns
- Find areas of agreement
- Incorporate areas of agreement into solution accepted by parties

If the local government agency does not agree to the binding arbitration provisions in the CARE Act or the binding arbitration requirement conflicts with local statutes and law, these issues must be brought to DHS attention and addressed immediately. The

language of the CARE Act requires that to be eligible to receive Title I funds, a grantee must develop grievance procedures that are consistent with the model procedures developed. Such procedures include a process for submitting grievances to binding arbitration. The statute makes it very clear that the Congressional intent was for the grievance procedures, both for the planning council and for the grantees, to include binding arbitration. If a local statute or set of

regulations precludes the grantee from engaging in binding arbitration, the grantee needs to make this known in writing to DHS as soon as possible. This communication should cite the specific statute or legislation and include a copy of it. The grievance procedures requirement has been discussed with grantees since July 1996, and DHS has not yet received any official notice of a grantee that has this situation. If this is an issue for any grantee, it needs to be addressed immediately and in writing, and DHS will work with the grantee to resolve it.

"To be eligible to receive funds under Title I, a grantee shall develop grievance procedures that are determined by the Secretary to be consistent with the model procedures [developed under the previous paragraph]. Such procedures shall include a process for submitting grievances to binding arbitration."

How can a planning council that has no contractual relationship or pre-arrangement with any service provider (one of the parties who can grieve) go through an arbitration process that requires some sort of written agreement between the parties (to go to non-binding and binding arbitration) prior to entering into any dispute?

What is grievable under the planning council procedures is the process by which decisions were made regarding the allocation of resources -- this does not require a contractual agreement. Also, the types of people who can grieve are not only potential providers of services but consumer groups/PLWH coalitions and caucuses who feel that the decision-making process was not documented in writing or was not followed, or that there was conflict of interest involved in that process and that therefore the decision rendered was not correct.

The issue is whether binding arbitration can be imposed on people, or whether it must be offered in such a way that both sides consent to it. The bottom line with respect to CARE Act processes is that binding arbitration is supposed to be a measure of last resort, used only if there is no other way to resolve a dispute. The implication is that if the person who grieves wants a decision referred to binding arbitration, the public recipient -- the planning council -- is compelled to take this action. Another possibility is to initiate a mediation process to see whether that would resolve the conflict without agreeing, at that point, to go into binding arbitration. The ideal, however, would be to treat these various processes as a continuum.

B. BASIC PRINCIPLES OF DISPUTE RESOLUTION

Traditional negotiation is based on positions: "I want this, you want that." Traditional negotiation tends to be manipulative. It relies on techniques to "psych out" the opponent, and on whom one brings to the table to help "win" the issue. Alternative Dispute Resolution (ADR) is an alternative to traditional negotiation. It relies on a neutral third party to build trust on both sides) and requires parties to be *ready*, *willing*, and *able* to implement alternatives. There are several advantages to addressing conflicts through ADR, including the following:

WAYS PEOPLE DEAL WITH CONFLICT

- Anger
- Avoidance
- Negotiation
- Alternative Dispute Resolution
- Litigation
- Violence

- It is faster;
- It is less expensive than litigation;
- The parties involved retain control of the process;
- It generates more creative solutions (all the parties are involved in generating solutions, rather than one party/judge);
- It results in more informed decisions (there is a greater understanding of the other party's "side");
- It results in greater participant satisfaction (no one agrees unless s/he wants to);
- It results in improved relationships between/among the parties, which is important when the parties involved in a conflict need to continue to work together.

Prevention -- preventing conflicts before disputes coalesce, instead of resolving conflicts after disputes are defined -- is the best way to avoid grievance problems in CARE Act programs. Some possible preventive methods are:

- Identifying "hot spots" and making training to address these issues available.
- Identify ways to address potential conflicts before they arise (e.g., attach to service contracts a charter of how disputes will be addressed).
- Agreeing on principles and or procedures to address conflicts before these arise (e.g., grievance procedures)

IV. CONCLUSIONS AND EVALUATION

A. CONCLUSIONS

A key priority of Title I grantees and planning councils is the development of grievance procedures required under the reauthorized CARE Act. Final grievance procedures must be submitted to DHS by May 1, 1997, so that approved procedures can be in place by June 1, 1997. Grievance procedures must address the types of grievance and who can grieve, include and emphasize non-binding procedures for resolving conflicts (mediation), contain binding arbitration procedures, and include rules for the grievance process that address costs, time limits for the procedures and the remedies, and selection of third parties.

An analysis of draft grievance procedures submitted by Title I programs with their formula applications in November 1996 indicates that most grantees and planning councils still need to modify their grievance processes to meet CARE Act requirements. DHS conducted an analysis of the draft grievance procedures submitted by all Title I programs. The analysis follows the outline of the model grievance procedures that were sent to grantees with the formula application guidance. The format of the analysis summarized the model into a series of questions which must be answered satisfactorily before the grievance procedures can be approved. Most of the draft procedures submitted have still to answer many of these questions.

DHS will be as flexible as possible in working with grantees and planning councils to develop grievance procedures that work at the local level, and meet the requirements of the law. DHS Program Officers are prepared to work with grantees and planning councils. DHS requests that any grantee needing assistance in addressing the specific questions raised in the analysis of its draft grievance procedures contact its Project Officer as soon as possible, to assure the May 1 deadline is met.

If a local government agency does not agree to the binding arbitration provisions in the CARE Act or the binding arbitration requirement conflicts with local statutes and law, these issues must be brought to DHS attention and addressed immediately. To receive Title I funds, a grantee must develop grievance procedures which include a process for submitting grievances to binding arbitration. This requirement has been discussed with grantees since July 1996, and DHS has not yet received any official notice of a grantee that has this situation.

B. EVALUATION

Participants in each teleconference call are encouraged to complete a brief written form asking for evaluation feedback, suggestions/comments, and recommendations for follow-up. Fifteen evaluations were received for this teleconference call; the full evaluation report is included in Appendix D. Major results are summarized below.

In general, the evaluation received highly satisfactory ratings (3.5 on a scale of 1 to 5). Participants appreciated the timeliness of the conference call and the opportunity to hear about

other grantee's concerns. However, several respondents commented that questions had been left unanswered. One participant commented that it might have been more productive to meet or discuss their specific issues with their project officer, than to participate in a more general conference call. Another suggested "splitting up the EMAs" (i.e., doing several calls with groups of EMAs rather than all 49) so more people could have a chance to ask their questions and share comments. Overall, 26% of the respondents felt that the question and answer segments were useful, and 26% indicated that they should be longer.

Comments regarding follow up to this call, indicated that 13% of respondents suggested having another conference call on grievance procedures. There were specific recommendations about further discussion on a consumer grievance model, and how to proceed if a planning council member or a consumer has a grievance with HRSA about a policy or other issue. It was also suggested that making available an "actual draft of sample procedures" might be helpful.

With regard to recommendations for the organization and content of future calls, several listeners agreed that more information prior to the conference call would facilitate more questions and interaction during the call. Also, several listeners suggested that limiting the number of speakers during the call and extending the call by half an hour would make it easier to cover all of the topics and questions raised.